

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

DEC 28 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

TRAVES J.,)	2 CA-JV 2011-0083
)	DEPARTMENT B
Appellant,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
ARIZONA DEPARTMENT OF ECONOMIC)	Appellate Procedure
SECURITY and ELI T.,)	
)	
Appellees.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J18555800

Honorable Peter W. Hochuli, Judge Pro Tempore

AFFIRMED

Nuccio & Shirly, P.C.
By Salvatore Nuccio

Tucson
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V Á S Q U E Z, Presiding Judge.

¶1 Traves J. appeals from the juvenile court's order terminating his parental rights to his son, Eli J., born in April 2010, based on time in court-ordered, out-of-home

care. *See* A.R.S. § 8-533(B)(8)(a). Traves argues there was insufficient evidence he “substantially neglig[en]t or willfully refused to participate in [offered] reunification services.” We affirm.

¶2 A juvenile court may terminate a parent’s rights if it finds clear and convincing evidence of one of the statutory grounds for severance and a preponderance of evidence that termination of the parent’s rights is in the child’s best interests. A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). “[W]e view the evidence and reasonable inferences to be drawn from it in the light most favorable to sustaining the [juvenile] court’s decision, and we will affirm a termination order that is supported by reasonable evidence.” *Jordan C. v. Ariz. Dep’t of Econ. Sec.*, 223 Ariz. 86, ¶ 18, 219 P.3d 296, 303 (App. 2009) (citation omitted). That is, we will not reverse a termination order for insufficient evidence unless, as a matter of law, no reasonable fact-finder could have found the evidence satisfied the applicable burden of proof. *Denise R. v. Ariz. Dep’t of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009).

¶3 Child Protective Services (CPS), a division of the Arizona Department of Economic Security (ADES), removed Eli from his mother’s care two days after he was born because of her ongoing involvement with CPS concerning her abuse and neglect of her other children.¹ At that time, Traves was incarcerated but participating in a work furlough program. Based on the mother’s conduct with her other children, Traves’s

¹After Eli’s mother was convicted of child abuse and domestic violence, she relinquished her parental rights to her other children.

incarceration, and CPS's concerns that Traves did not recognize the risk Eli's mother posed to a newborn, ADES filed a dependency petition as to both parents. At a preliminary protective hearing in May 2010, the juvenile court warned Traves that he had to participate in the services provided in the case management plan or risk having his parental rights to Eli terminated. Despite the availability of reunification services during his incarceration and work furlough, Traves did not participate in them. In July 2010, the court found Eli dependent after Traves and Eli's mother admitted the allegations in an amended dependency petition.

¶4 At the time of a permanency hearing held in September 2010, Traves had missed three appointments to complete a psychological evaluation, had not participated in parenting classes, and had not complied with random urinalysis. In addition, although he had participated in a substance-abuse evaluation, he did not participate in substance abuse treatment. He also did not consistently maintain contact with his therapist or family support partner, and missed scheduled appointments with them. Thus, at the end of September, the juvenile court changed the case plan to a concurrent plan of family reunification and severance and adoption.

¶5 Over the next two months, Traves began participating in random urinalysis, consistently attended supervised visitation with Eli, and participated in individual parenting sessions as well as a bonding assessment and substance abuse assessment. By December, however, Traves had stopped participating in individual parenting sessions and urinalysis, began missing visits, and did not begin required parent-child therapy or substance abuse treatment.

¶6 The juvenile court changed the case plan to severance and adoption at the end of January 2011, and ADES moved to terminate Traves’s parental rights to Eli on time-in-care grounds pursuant to § 8-533(B)(8)(a). In February, Traves participated in relationship therapy and began participating in domestic violence classes in March, but continued to miss urinalysis until April. After a seven-day contested severance hearing beginning in April and ending in June 2011, the court found ADES had proven termination of Traves’s parental rights was warranted pursuant to § 8-533(B)(8)(a) and that termination was in Eli’s best interests.²

¶7 Termination is warranted pursuant to § 8-533(B)(8)(a) when the child has been in court-ordered, out-of-home placement for nine months or longer and “the parent has substantially neglected or wilfully refused to remedy the circumstances that cause the child to be in an out-of-home placement.” “[P]arents who make appreciable, good faith efforts to comply with remedial programs outlined by ADES will not be found to have substantially neglected to remedy the circumstances that caused out-of-home placement, even if they cannot completely overcome their difficulties.” *In re Maricopa Cnty. Juv. Action No. JS-501568*, 177 Ariz. 571, 576, 869 P.2d 1224, 1229 (App. 1994). “[T]he test focuses on the level of the parent’s effort to cure the circumstances rather than the parent’s success in actually doing so.” *Marina P. v. Ariz. Dep’t of Econ. Sec.*, 214 Ariz. 326, ¶ 20, 152 P.3d 1209, 1212 (App. 2007). But when parents make only “sporadic, aborted attempts to remedy” the circumstances causing the out-of-home placement, a

²The juvenile court also terminated Eli’s mother’s parental rights to Eli. She is not a party to this appeal.

“court is well within its discretion in finding substantial neglect and terminating parental rights on that basis.” *Maricopa Cnty. Juv. Action No. JS-501568*, 177 Ariz. at 576, 869 P.2d at 1229. And “[t]ermination is not limited to those who have *completely* neglected or willfully refused to remedy” the circumstances that caused out-of-home placement. *Id.*

¶8 Traves asserts his efforts cannot fairly be characterized as sporadic or aborted. He acknowledges he was “slow” to start services “due to his incarceration” and “[he] was not compliant with his services for a period of approximately two months in late 2010 and early 2011.” But, he reasons, by February “he was fully engaged in numerous services” and continued that performance until the termination hearing. Thus, he contends, there was insufficient evidence that termination of his parental rights was warranted pursuant to § 8-533(B)(8)(a).³ We find the evidence amply supports the juvenile court’s determination and clearly demonstrates the marginal nature of Traves’s attempts to remedy the circumstances causing Eli to be in out-of-home care. In the time between the preliminary protective hearing and the termination hearing, Traves had only been in reasonable compliance with the case plan for approximately six months out of the thirteen that had passed since ADES filed the dependency petition. And the majority of that compliance came after ADES had moved to terminate his parental rights to Eli and after Traves had failed to participate in services consistently for seven of the preceding nine months. *See Maricopa Cnty. Juv. Action No. JS-501568*, 177 Ariz. at 577, 869 P.2d

³Traves does not argue the evidence was insufficient to show ADES had made diligent efforts to provide services, that Eli was in out-of-home placement for nine months or more, or that termination was in Eli’s best interests.

at 1230 (finding parent's successful efforts at rehabilitation during eight months prior to trial "too little, too late" in light of substantial neglect to remedy addiction for more than a year while child in out-of-home care). Traves has offered no reasonable explanation why he did not begin services until approximately five months after the preliminary protective hearing or why he then stopped participating in services for another two months after only two months of compliance. Moreover, despite Traves's increased participation in services after ADES moved to terminate his parental rights, Traves still did not participate in a psychological evaluation or substance-abuse treatment.

¶9 For the reasons stated, the juvenile court's order terminating Traves's parental rights to Eli is affirmed.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge